



Paper No. 22

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OFFICE OF PETITIONS

In re Application of  
Hull et al.  
Application No. 09/343,759  
Filed: June 30, 1999  
Attorney Docket No. PPC-668

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 10, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 1.17(c)) within the time period provided in 37 CFR 1.192(a). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed March 3, 2003, and no extensions of time under the provisions of 37 CFR 1.136(b) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.192(b) & 1.197(c). As no claim was allowed, the above-identified application became abandoned on May 4, 2003. See MPEP 1215.04. A Notice of Abandonment was mailed on September 26, 2003.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,<sup>1</sup>
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition

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<sup>1</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.<sup>2</sup>

The instant petition lacks item (4). A terminal disclaimer (and fee) is also required for a utility or plant application filed on or after June 8, 1995, but before May 29, 2000, where the application became abandoned during appeal. The reason being that utility and plant patents issuing on applications filed on or after June 8, 1995, but before May 29, 2000, are eligible for the patent term extension under former 35 U.S.C. 154(b) (as a result of the Uruguay Round Agreement Act (URAA)). If such an application is abandoned during appeal, the patentee of a patent issuing from such an application is eligible for these situations will make certain that any patent term extension obtained for the period of abandonment while the application is under appeal, interference, or a secrecy order will be dedicated to the public.


Further correspondence with respect to this matter should be addressed as follows:

**By mail:** Mail Stop PETITION  
Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

**By facsimile:** (703) 308-6916  
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Telephone inquiries should be directed to Paralegal Liana Chase at (703) 306-0482.

  
BethAnne Daygan  
Petitions Examiner  
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Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>2</sup> See MPEP 711.03(c)(III)(C) and (D).